

**MINUTES OF THE MEEETING  
OF THE BOARD OF DIRECTORS OF  
THE DEPARTMENT OF WATERWORKS**

**Date: October 30, 2003**

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The meeting of the Board of Directors (the "Board") of the Department of Waterworks (the "Department") was called to order at 5:40 p.m. at 200 East Washington Street, Indianapolis, Indiana in the Public Assembly Room of the City-County Building. The following Board members were in attendance: Samuel L. Odle, S. Michael Hudson, Jack Bayt and Beulah Coughenour.

Chairperson Odle stated that due to a lack of quorum, the action items of the agenda would be addressed upon the arrival of an additional Board.

**I. Financial Report of the Department**

Robert Erney, Financial Manager of the Department, presented the Financial Report as set forth in Exhibit A, attached hereto and made a part hereof (the "Financial Report").

Chairperson Odle asked for any questions concerning the Financial Report.

Kobi M. Wright, Special Assistant Corporation Counsel, stated that the Department's staff, at the instruction of the Board at last month's meeting, has begun working with Steve Paul of Baker & Daniels to address the Department's payment in lieu of taxes matters including any possible challenges to property assessments and state distributables. He added that Mr. Paul formerly was tax counsel to the former Indianapolis Water Company when it challenged its 1989 and 1995 property assessments.

Vice Chairman Mutz arrived at 5:45p.m. Chairperson Odle declared that the Board had achieved a quorum and would address the items on the agenda in the order presented therein.

**II. Approval of the Minutes of the Meeting of September 25, 2003**

Chairperson Odle asked for motions to approve the minutes of meeting of September 25, 2003 as set forth in Exhibit B, attached hereto and made a part hereof (the "Minutes"). A motion was made and seconded to approve the Minutes. The Board unanimously approved the Minutes.

**III. Resolution No, 19, 2003- Approval of the 2004 Capital Plan**

Carlton E. Curry, Director of Contracts and Operations of the Department, summarized the 2004 Capital Plan as set forth in Exhibit C, attached hereto and made a part hereof (the "2004 Capital Plan").

At the request of Mr. Hudson, Mr. Curry summarized the capital budget history set forth in the 2004 Capital Plan. Mr. Hudson asked if 1996-98 were anomalies for IWC. Mr. Curry responded affirmatively. Mr. Hudson asked what will be the typical capital replacements annually. Mr. Curry responded but for projects undertaken due to new regulation or development of the Waverly wellfield, the annual recommended amount will be around \$35 million. Mr. Hudson recommended that in the future the Department breakdown the suggested capital projects per sustaining current activity and growth. Mr. Curry indicated that the growth, infrastructure, regulatory and safety projects are designated as such in the 2004 Capital Plan.

Mr. Hudson asked if accounting rules in the water industry permit technology to be capitalized. Mr. Curry stated practically that is the case but not in the form Mr. Hudson's would have done for engineering. Vice Chairperson Mutz stated the Department can only capitalize physical things. Mr. Curry affirmed the statement.

Chairperson Odle asked if the bond issue will fund projects in 2004-2005. Mr. Curry stated that is correct. Vice Chairperson Mutz asked if the Board would be provided capital projects breakdown concerning the bond issuance. Mr. Curry responded affirmatively and added that staff will submit to the Board all of these capital projects individually for approval throughout 2004.

Chairperson Odle added that approval of the 2004 Capital Plan is part of the approval process concerning the 2004 capital projects. Mr. Curry responded affirmatively.

Mr. Bayt asked why the 2004 Capital Plan includes valve replacement and roof replacement that would appear to be operational matters.

Mr. Curry responded that a distinction has been made between the Department and USFIW as to valves that are small process valves and others large in type. He added large valves are capital projects. Mr. Curry further stated that replacement of roofs are capital projects per exhibit 5 of the management agreement with USFilter Indianapolis Water LLC ("USFIW").

Chairperson Odle asked if the Board had any further questions. Hearing none, Chairperson Odle asked for motions to adopt Resolution No. 19, 2003. A motion was made and seconded. The Board unanimously approved the resolution.

#### **IV. Resolution No. 20, 2003-Declaratory Resolution**

Chairperson Odle stated that the resolution is the first step by the Board to address a bond issuance. He added that the Board would not hold a public hearing on the resolution but that it will do so next month on the final approval of the bond issuance in the event the Board adopts Resolution No. 20, 2003.

Vice Chairperson Mutz asked for the date of the next meeting. Mr. Wright stated the next meeting is on November 20, 2003.

Mr. Wright summarized Resolution No. 20, 2003. Following his summary, Mr. Wright stated that special bond counsel Ice Miller and the Executive Director and Interim City Controller Robert Clifford are present for any additional questions the Board may have.

Chairperson Odle asked for questions concerning the resolution. A motion was made and seconded by the Board. Chairperson Odle underscored the importance of the resolution stating the funds procured by the bond issuance are the source of the utility's infrastructure and generates jobs within USFIW to work on those projects.

## **V. Initial Review of 2004 Department Budget**

Mr. Erney presented a draft of the Department of Waterworks 2004 Budget as set forth in Exhibit D, attached hereto and made a part hereof (the "Draft 2004 Budget").

Vice Chairperson Mutz asked what assumptions are built into this figure concerning salary level for Department of Waterworks employees.

Mr. Erney replied that it's about a 3 % salary increase.

Vice Chairperson Mutz asked if that is what the City-County Council are building into all of their budgets.

Mr. Erney replied the City-County Council didn't authorize any increases for regular employees that he is aware of, but Department of Waterworks are able to do so because the Department is on a separate budget.

Vice Chairperson Mutz stated he understood that fact but wanted to make that a point for the public record.

Chairperson Odle asked if the vehicles are used by USFIW.

Mr. Erney replied they are considered capital projects and are used by USFIW employees. He continued with the Draft 2004 Budget.

Vice Chairperson Mutz questioned whether the management fee is what is budgeted to pay USFilter.

Mr. Erney replied he increased the management fee this year by 1 ½% given the maximum is 2 ½% and this year the Department paid a little under 1 % increased from last year.

Vice Chairperson Mutz asked what Mr. Erney meant by "increase".

Mr. Erney replied the management agreement states that DOW will increase the base payment to USFilter by 2 ½% or 88.6% of the change in the consumer price index annually.

Vice Chairperson Mutz asked if the management fee shown in the Draft 2004 Budget is the maximum that could be paid to USFIW. Mr. Erney responded affirmatively adding that it includes maximum incentive payments.

Mr. Hudson asked what are the assumptions in the pension trust fund payment.

Mr. Erney replied that the set amount that was net out in the contract . He added it was set by the Indiana Utility Regulatory Commission (“IURC”) at one time and it hasn’t changed. He added that it will not be changed until IURC mandates a change thus the Department will continue to pay it at the same rate.

Vice Chairperson Mutz questioned the water charge of \$475,000.

Mr. Erney stated the water charge is related to Resolution 22, 2003 whereby the Department purchases water from Westfield.

Mr. Erney resumed his presentation of the Draft 2004 Budget.

Vice Chairperson Mutz asked if property tax figures is an estimate what Department of Waterworks pays this year.

Mr. Erney responded affirmatively and that the Department will likely be around \$8.7 million this year. Vice Chairperson Mutz asked why do the taxes go down for 2004. Mr. Erney responded that the projection is based upon the possibility that property tax appeals will be successful.

Mr. Wright further stated Steve Paul will not only examine whether to appeal real property taxes but also state distributables, personal property taxes, which are self reported and represents a significant part of the increase the Board saw in property taxes last month .

Mr. Hudson stated those “taxes” are payments in lieu of taxes (“PILOTS”) not taxes because Department as a municipal entity does not pay taxes, however, the Department agreed to PILOTS to make up for the loss of taxes paid by IWC to local jurisdictions.

Chairperson Odle stated how does the Department track the \$22.9 million back to Resolution No. 19, 2003.

Mr. Erney stated the only thing that goes back to resolution 19 is the water utility facility of \$12.767 million. He added that everything else is part of the written normal operating budget. He added that the \$12.767 is the only part considered to be for capital projects.

Vice Chairman Mutz asked how the debt service ratio of 140% was arrived at. Mr. Erney stated it is the total revenues less operating expenses then divided by the debt service payments. He added the capital payments are accounted for after the debt service payments.

Chairperson Odle asked about projected water revenues. Mr. Erney stated the Department is on budget to achieve a 2.3-2.4% annual increase. He added that gross revenues for 2003 will be just under \$100 million.

Mr. Erney continued to present the Draft 2004 Budget.

Mr. Hudson asked if the Draft 2004 Budget takes into account the upcoming bond issuance. Mr. Erney stated no and that if the Board issues the bonds, staff will return to the Board to amend the 2004 budget to take into account any issuance.

Mr. Hudson asked if the debt service coverage ratio will decrease with the issuance of \$50 million of bonds. Mr. Erney responded affirmatively however that the Department will be well within the debt service ratio requirement of the bond covenants.

Mr. Bayt asked what happens if the Department does not meet its projected revenues and PILOTs don't decrease. Mr. Erney stated the Department could move budget sources from one spot to another if needed.

Chairperson Odle stated the Board will examine the budget next month.

## **VI. USFIW Report**

Tim Hewitt, President and Operations Manager of USFIW, summarized USFIW's report ("USFIW Report").

Mr. Hudson asked if the Board would be getting a report concerning the turn on/off's in a timely fashion.

Mr. Hewitt replied USFIW expects to report on this matter to the Board next month.

Vice Chairperson Mutz asked if USFIW would update the Board on the changes within USFilter.

Mr. Hewitt replied the parent company, Veolia Water, is selling off Culligan, Everpure and other service products businesses.

Chairperson Odle asked about the number of main breaks that occurred in the month.

Mr. Hewitt mentioned the USFIW Report sets forth the number of main breaks repaired.

Mr. Hudson asked if USFilter would make sure that it is pro-active and on top of the hydrant situation with the cooler months approaching.

Mr. Hewitt replied that USFilter will be on top of these issues and has undertaken hydrant testing and other normal testing items as well.

Chairperson Odle further stated that it appears USFIW repaired 45 main breaks and 48 service lines. He asked how many people were affected.

Mr. Hewitt stated that he couldn't answer that question at this time but could include that in future reports along with historical data.

Vice Chairperson Mutz asked if Mr. Hewitt could speak to his improving relationship with the IURC and Commissioner Ripley particularly. Mr. Hewitt stated he believes the relationship with the IURC has improved as USFIW and the IURC have met monthly.

## **VII. Report of the Directors of Contracts and Operations of the Department**

Mr. Curry presented his report as set forth in Exhibit E, attached hereto and made a part hereof (the "Department Report").

Mr. Hudson asked if the Service Advisory Board was well attended. Mr. Curry stated the Service Advisory Board had one person beyond the quorum requirement in attendance. Mr. Wright added that it was the highest attendance of the group this year.

Mr. Bayt asked if the Department is negotiating with the owners of Boone County Utility ("BCU") or banks because BCU is in bankruptcy.

Mr. Wright stated BCU is subject to two third party reviews. He added the IURC is deterring whether it is in compliance with the order the IURC issued in March 2003. He added that simultaneously BCU filed for bankruptcy late last month. Board officers had asked what role if any should the Department of Waterworks should have in terms of protecting the departments own contract and if any additional action should be considered. He added that BCU is scheduled to submit filings to the IURC within the week and that the bankruptcy court proceedings have been relatively dormant. He stated that the Department is waiting to see what the IURC will do. Mr. Bayt asked if post the IURC action, would counsel then determine how to engage the bankruptcy trustee. Mr. Wright stated if the court appoints a bankruptcy trustee then the Department will have to examine that matter as well.

Chairperson Odle asked if the unserved area maps are available to the public to view.

Mr. Curry replied they are available the Department's general office and that the Office of Corporation Counsel and the City Controller all have copies of maps for the public to view.

Chairperson Odle further stated the Department should make sure that the Department of Health gets those maps.

Mr. Curry replied that we continue to get data regarding water quality and income level and both could be some added help as the Department finds a way to fund this.

**VIII. Resolution No. 21, 2003-Approval of Certain Capital Projects-Carlton E. Curry, Director of Contracts and Operations**

Mr. Curry summarized Resolution No. 21, 2003.

Ms. Coughenour questioned the estimated verbal cost of \$12,000 to the actual charge of \$25,000 or \$26,000 given it more than doubled. She asked if there was a new change in scope concerning the change order.

Mr. Curry added that this change order occurred due to Indianapolis Power & Light estimates. He added no change in scope occurred. He stated USFIW may be able to comment on the change order.

Mr. Hewitt stated that he could get back to the Board regarding the increase.

Chairperson Odle stated the Board could entertain the resolution without approving the change order.

Vice Chairperson Mutz moved to approve the resolution with the exception as to Exhibit E of the Resolution. The motion was seconded. The Board unanimously adopted the resolution.

**IX. Resolution No. 22, 2003-Approval of Water Purchase Agreement with Town of Westfield**

Mr. Wright summarized the resolution.

Mr. Bayt asked if the minimum monthly guarantee payment adjusts if the Department doesn't receive "x" amount of water set forth in the contract.

Mr. Wright replied if Westfield can't produce the water a real concern about the entire contract exists.

Mr. Curry stated that if the Department does not use the amount water set forth in the contract, the Department can reduce the fee.

Vice Chairperson Mutz asked if this contract is consistent with the Draft 2004 Budget. Mr. Erney responded affirmatively.

Ms. Coughenour asked why did the Department of Waterworks indemnify Westfield in the original contract.

Mr. Wright replied the Department previously indemnified Westfield because the Department agreed in the original agreement in June of this year not to change any of the terms of the agreement, other than the fee, that the Department assumed from NiSource and it had an indemnification clause. He added that after the Board had approved that one agreement and Westfield chose to renegotiate it, the parties came to a new understanding as to indemnification responsibilities.

Chairperson Mutz asked for any questions from the Board. Hearing none, Chairperson Odle asked for motions to adopt the resolution. A motion was made and seconded. The Board unanimously adopted the resolution.

## **X. Other Business**

Chairperson Odle asked for public comments.

Mr. Glenn Pratt stated that it appears the Department is headed down the right road concerning the shut off of houses for water and further stated that the policy should be available for neighborhood groups to review if at all possible before the Board considers the matter.

Hearing no other business pending, Chairperson Odle adjourned the meeting at 6:54 p.m.



Approved this 20th day of November 2003.

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Samuel L. Odle, Chairperson

Attest:

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S. Michael Hudson,  
Secretary-Treasurer